

January 4, 2006

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Ex Parte Notice in ET Docket No. 05-247 – In the Matter of  
Petition by Continental Airlines, Inc. for a Declaratory Ruling  
Regarding Whether Certain Restrictions on Antenna Installation  
Are Permissible under the Commission’s Over-the-Air-Reception  
Devices (OTARD) Rules**

Dear Ms. Dortch:

CTIA – The Wireless Association® submits the following *ex parte* letter in the above-captioned proceeding to express concerns about unlawful restrictions imposed by the Massachusetts Port Authority (“Massport”) on the installation and use of antennas to create Wi-Fi hotspots at Boston-Logan International Airport.<sup>1/</sup> CTIA opposes Massport’s efforts to exert exclusive control over a tenant’s provision of unlicensed WiFi services at Boston-Logan Airport. Massport’s actions undermine sound spectrum management policies limiting exclusive use of spectrum to entities that have obtained licenses from the FCC. CTIA urges the Commission to reaffirm its prior decisions in this area that restrictions imposed by landlords such as Massport on tenants’ deployment of unlicensed wireless services in multi-tenant environments violate federal law.

This issue has been addressed by the Commission. The FCC’s Office of Engineering and Technology already has released a Public Notice in response to questions from the public regarding the use of unlicensed devices, including customer antennas, especially in the context of a variety of multi-tenant environments (MTEs). MTEs encompass venues such as hotels, conference and convention centers, airports, and colleges and universities. In particular, questions have arisen about the role of the

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<sup>1/</sup> See Petition of Continental Airlines, Inc. for a Declaratory Ruling, filed July 7, 2005; Supplement to Petition of Continental Airlines, Inc. for a Declaratory Ruling, filed July 27. See also OET Seeks Comment on Petition from Continental Airlines for Declaratory Ruling Regarding Whether Certain Restrictions on Antenna Installation Are Permissible Under the Commission’s Over-the-Air Reception Devices (OTARD) Rules, *Public Notice*, ET Dkt No. 05-247, DA 05-2213 (rel. July 29, 2005).

Commission in addressing and resolving radio frequency interference ("RFI") issues in these settings. In addition, questions have arisen about the ability of homeowners associations, landlords, and other third parties to prohibit customer use of small antennas when consumers install and operate them as unlicensed devices.<sup>2/</sup> In response to those questions, the Office of Engineering and Technology reaffirmed that "under the Communications Act, the FCC has exclusive authority to resolve matters involving radio frequency interference [RFI] when unlicensed devices are being used, regardless of venue."<sup>3/</sup>

The proposed Massport restrictions are what the Commission sought to prohibit when it extended the Over-the-Air Reception Devices ("OTARD") rules to customer-end equipment that receive and transmit wireless signals. In extending those rules to cover fixed wireless services, the Commission declared that restrictions on consumers' ability to place antennas used for the transmission or reception of fixed wireless signals impede the achievement of important federal objectives.<sup>4/</sup> It thus prohibited landlords such as Massport from prohibiting a user's fixed wireless devices when the device is located "on property within the exclusive use or control" of the user or where the user has a "direct or indirect ownership or leasehold interest in the property, except under certain exceptions for safety and historic preservation."<sup>5/</sup> Nothing that Massport has submitted in the record in this proceeding warrants any departure from the Commission's sound decisions on this issue.

Massport's efforts to create a monopoly in the provision of unlicensed wireless services at Logan Airport clearly threaten these policies. In arrogating the exclusive use of spectrum that the Commission has designated for shared, unlicensed use, Massport is attempting to usurp the Commission's role in spectrum management. The Communications Act of 1934, as amended, gives the Commission exclusive jurisdiction over all issues related to the use of radio frequencies, including the authority to resolve disputes arising in connection with tenants' use of unlicensed

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<sup>2/</sup> See Commission Staff Clarifies FCC's Role Regarding Radio Interference Matters and Its Rules Governing Customer Antennas and Other Unlicensed Equipment, *Public Notice*, 19 FCC Rcd 11300, at 1 (rel. June 24, 2004).

<sup>3/</sup> *Id.*

<sup>4/</sup> See Promotion of Competitive Networks in Local Telecommunications Markets, *First Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 22983, 2301-2 ¶ 107 (2000).

<sup>5/</sup> *Public Notice*, supra n. 2, at 2-3. To the extent that Massport asserts there are interference or safety issues associated with the operation of wireless devices, the proper course would have been for it to seek a waiver of the OTARD rules or to bring its concerns to the Commission for resolution, not to unilaterally prohibit Continental's use of those devices. See 47 C.F.R. 1.4000.

wireless devices in multi-tenant environments. If allowed to stand, Massport's restrictions would create a dangerous precedent suggesting that landlords — and not the Commission — possess the authority to manage critical spectrum resources.

Further, Massport misconceives the nature of unlicensed spectrum. By its very nature, unlicensed spectrum does not enjoy protection against interference from those operating consistent with FCC rules. By asserting that only sole occupation of the band will “adequately resolve” its interference concerns, Massport is effectively seeking protection that is reserved for licensed operation. In contrast to exclusive licensed spectrum, the largely commercial, nonexclusive users of unlicensed spectrum must accept interference from other users or engineer their systems to avoid such interference. Unlicensed spectrum users have no interference protection rights, and the Commission has declined to impose “spectrum etiquette” for Part 15 bands. The decision that Massport seeks from the Commission is utterly inconsistent with the shared use of this band that the Commission's rules contemplate.

In summary, CTIA urges the Commission to unambiguously affirm that Massport's efforts to control Continental's unlicensed wireless service is prohibited by federal law. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully Submitted,

*/s/ Christopher Guttman-McCabe*

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Vice President Regulatory Affairs  
CTIA – The Wireless Association®

cc: Bruce Franca  
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